

## **MINUTES**

### **MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON FISH AND GAME**

**Call to Order:** By **CHAIRMAN KEN MESAROS**, on February 16, 1999 at 3:00 P.M., in Room 325 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Ken Mesaros, Chairman (R)  
Sen. Mike Taylor, Vice Chairman (R)  
Sen. Tom A. Beck (R)  
Sen. Al Bishop (R)  
Sen. William Crismore (R)  
Sen. Steve Doherty (D)  
Sen. Pete Ekegren (R)  
Sen. Jon Ellingson (D)  
Sen. Eve Franklin (D)  
Sen. Chuck Swysgood (R)  
Sen. Jack Wells (R)

**Members Excused:** Sen. Bea McCarthy (D)

**Members Absent:** None.

**Staff Present:** Leanne Kurtz, Legislative Branch  
Adrienne Pillatzke, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 445, 2/16/1999; SB 458,  
2/16/1999; SB 418, 2/16/1999  
Executive Action: None.

#### **HEARING ON SB 445**

**Sponsor:** SENATOR CHARLES SWYSGOOD, SD 17, Dillon

**Proponents:** REPRESENTATIVE BILL TASH, HD 34, Dillon  
Robin Cunningham, Fishing Outfitters Assoc. of MT  
Randy Smith, Big Hole Watershed Committee  
Steve Luebeck, George Grant Chapter of Trout Unlimited  
Vince Fischer, SkyLine Sportsman  
Jim Hagenbarth, Big Hole Watershed Committee  
Jerry Kustich, Lewis & Clark Trout Unlimited  
Robbie Garrett, Beaverhead County Forum  
Allen Schallenger, Experience Montana  
Monty Hankinson, Outfitter  
Bill Allen, Beaverhead Outdoors Association  
Pat Graham, Fish Wildlife and Parks  
Paul Roos, Outfitter  
Stuart Decker, Big Hole River Foundation  
Darrell Baker, Anaconda Sportsman  
Garth Haogland, Beaverhead County Commission

**Opponents:** David Dittloff, MT Wildlife Federation  
Jim McDermid, Medicine River Canoe Club

**Opening Statement by Sponsor:**

SENATOR CHARLES SWYSGOOD, SD 17, Dillon, stated SB 445 was brought to the committee to address concerns the community had with conditions on two rivers in his district. He said there has been a lot of discussion about the subject and there is a feeling that something has to be done. He commented that SB 445 limits the number of launches for outfitters on the Beaverhead and Big Hole Rivers. The bill also limits the use to weekdays only for outfitters and weekends for the general public fishing. He said the bill also has a section directing the Department of Fish Wildlife and Parks to allow the Big Hole Watershed Committee and the Beaverhead County Consensus Forum to develop further plans for recreational uses of the two rivers.

**Proponents' Testimony:**

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REPRESENTATIVE BILL TASH, HD 34, Dillon, said the problems have been accumulating on the two rivers. He stated the legislation is needed very much in order to appropriately regulate these waters to the point of where the resident fishers are not canceled out.

Robin Cunningham, Fishing Outfitters Assoc. of MT, said the association supports SB 445 and proposed amendments. The

association recognizes the problems on these rivers. He stated outfitters are typically held to a higher standard. He discussed the rules of etiquette for the rivers. He said outfitters must be willing to regulate themselves. He described the three main points of the bill. He said the proposed amendments are directed toward the last two main points. He entered and discussed the amendments, **EXHIBIT(fis38a01)**.

**Randy Smith, Big Hole Watershed Committee**, discussed how the Big Hole Watershed Committee came about and who the members are. He described the issues which they worked on. He stated they support the bill to get the process started before there is a worse problem that will require immediate action by the FWP.

**Steve Luebeck, George Grant Chapter of Trout Unlimited**, provided written testimony, **EXHIBIT(fis38a02)**.

**Vince Fischer, SkyLine Sportsman**, stated they think the bill is reasonable and needed. He hopes the committee will support the bill particularly with the amendments that have been presented.

**Jim Hagenbarth, Big Hole Watershed Committee**, stated the committee is very concerned about the pressure on the Big Hole River and its quality. He stated no matter how the committee decides to limit the pressure on the rivers, it must not be greater than it historically was. He discussed a section of the river from Melrose down and said if that piece is not regulated late in the year there will be problems.

**Jerry Kustich, Lewis & Clark Chapter of Trout Unlimited**, stated they support the bill. He commented if the amendments are satisfactory with the outfitting industry and all interested parties, they will be interested in backing the legislation. He stated if they gain this and lose access on SB 418, then SB 445 will make no sense.

**Robbie Garrett, Beaverhead County Forum**, provided written testimony, **EXHIBIT(fis38a03)** and pamphlet, **EXHIBIT(fis38a04)**.

**Allen Schallenberger, Citizen from Sheridan**, asked to withdraw a letter he sent because he now supports the bill with amendments.

**Monty Hankinson, Big Hole/Beaverhead Outfitters and Guides Assoc.**, stated his main concern is the Beaverhead River. He said the river cannot handle the pressure it is taking.

**Bill Allen, Beaverhead Outdoors Association**, stated the association is in favor of SB 445.

**Pat Graham, Fish Wildlife and Parks**, entered written testimony, **EXHIBIT(fis38a05)**.

**Paul Roos, Outfitter**, said he supports SB 445. He commented on the cut off date of January 1, 1999 and the Smith River process. He stated the amendment proposing the two launch concepts is good and also thinks the concept of trying to control lateral expansion of outfitters of a total season is good. He said the state needs a bill that deals with the whole issue state-wide.

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**Stuart Decker, Big Hole River Foundation**, said the foundation is in support of the bill as long as the amendments seek to make it a more inclusive process for consensus building.

**Darrell Baker, Anaconda Sportsmen**, stated they support SB 445 with amendments.

**Garth Haogland, Beaverhead County Commission**, stated the commission believes SB 445 is the answer or the start of answers to addressing the issues that have occurred through recreation use of the rivers that flow through the county.

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**Opponents' Testimony:**

**David Dittloff, MT Wildlife Federation**, provided written testimony, **EXHIBIT(fis38a06)** and proposed amendments, **EXHIBIT(fis38a07)** and a outline of why they oppose SB 445, **EXHIBIT(fis38a08)**.

**Jim McDermand, Medicine River Canoe Club**, stated their concern is the Beaverhead and Big Hole Rivers which are Montana rivers and all Montanans use them. He said Montana desperately needs a state-wide river management bill to address over crowding and social conflict among users, but any plan should have input from all users, not just the local people. He said if the club's concerns are addressed through the amendments offered, then they would have no problem excepting SB 445 with amendments.

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**Questions from Committee Members and Responses:**

**SENATOR DOHERTY** referred about the amendments which proposed the outfitters would be limited in the number of launches to two boats per state or federal river access per day. He asked if

that is intended to mean all outfitters or just one outfitter will limit himself to two launches per access site. **Robin Cunningham** replied the population of outfitters that are allowed to participate on these rivers according to their operation plan would be included in the population who must limit them individually to two boats per site per day. He said outfitters could launch no more than two craft per site. **SENATOR DOHERTY** asked if that was all outfitters or just each individual outfitter is limited to two launches per site per day. **Robin Cunningham** responded yes, each outfitter is limited to two. **SENATOR DOHERTY** asked how many sites are on the river that they are talking about that an outfitter would be able to launch from. **Robin Cunningham** stated on the Big Hole River there are probably 15 sites yielding 30 craft per outfitter per day.

**SENATOR DOHERTY** asked how many outfitters are licensed to do business on the Big Hole and how many launches are they being limited to compared to what is going on already. **Pat Graham** replied the department does not license outfitters so he could not give the figures. **SENATOR DOHERTY** asked if he knows how many crafts are being launched per day during the season. **Pat Graham** answered somewhere between 7-8% of the use is outfitted. He said he could not translate that into an actual use figure but could get that information.

**SENATOR DOHERTY** said what he is was getting at is how much are they really limiting, and if they are really limiting anything at all. **Pat Graham** replied he understands his point but doesn't have the information to tell him.

**SENATOR WELLS** stated the amendment Mr. Cunningham proposed, limits the access for the areas from Jerry Creek down to Salmon Fly. He asked how much of the river is being left for the sportsman fisherman. **Robin Cunningham** said it is more appropriate for a local outfitter to answer the question. **Stuart Decker** replied Jerry Creek to Melrose represents about 35-40 miles with 5 access sites. He said of the section of the river that is considered fishable represents the gut of the best and has special regulations in place. Historically, this is where most of people give their attention when they go fishing. That is where the most pressure is. He said Jerry Creek down to Melrose represents probably 70% of the traffic any given day.

**SENATOR WELLS** asked about the section on the Beaverhead River from Clark Canyon to Hannonberry. **Monty Hankinson** stated on the Beaverhead from the dam to Hannonberry there are three major accesses which cover the first 5-6 miles of the river. **SENATOR WELLS** asked what percentage is the first 5-6 miles, 50% of the

river or is it a good fishing area. **Monty Hankinson** replied that is the most popular area. He said on any tail water, the first few miles below the dam are always the top fishing and most popular area.

**SENATOR TAYLOR** asked how many outfitters are on the river on a given day and how many boats go down the river. **Stuart Decker** said that is a moving target. He asked Senator Taylor if he is asking for outfitters who reside directly in the area or outfitters who use it habitually. **SENATOR TAYLOR** stated he just wanted to know approximately. **Stuart Decker** said seasonally it is very different. On June 15 there may be 10, 15, 20 over a course of a 30-mile stretch and you could float that far in a day. In September, 30 miles of river represents 6 days worth of fishing and there would be between 2 and 4 outfitters on a section. Anywhere from Divide to Melrose there would be 10 to 12 boats being put in at Divide and 10 to go into Melrose.

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**SENATOR BISHOP** asked if the Big Hole and Beaverhead are the only rivers they are having a problem within his district. **SENATOR SWYSGOOD** replied yes. **SENATOR BISHOP** asked about the Ruby River and the Madison River. **SENATOR SWYSGOOD** said he didn't want to open a can of worms on the Madison and he is not as familiar with that river. He said it is a whole different situation.

**Closing by Sponsor:**

**SENATOR CHARLES SWYSGOOD, SD 17, Dillon** said he has some real concerns as it relates to the resource and the use of those resources. He stated maybe everything we do isn't the panacea for trying to correct everything. He said they see some real potential for devastation of the resource. He thinks that is why the bill contains the section which allows them to address other uses of the river and allows them to establish a management plan for all recreational uses of the river. He said when it comes to limiting use on the river by the outfitters, it is a difficult situation to address, but if they do something similar to what is being suggested, then it couldn't get any worse than it is right now. He stated to remember a fishing outfitter files an operational plan and the outfitter lists the rivers he is going to use. Any outfitter that has an operational plan on file, as of January 1, 1999 and lists the Beaverhead and the Big Hole, would be part of the total picture. He has concerns with some of the amendments as to where they are going and the committee will discuss them during executive action. He said their intent is that the situation has to be rectified or at least slowed down, which the bill is attempting to do. He hopes when the

legislature convenes next time there will be a proposal that will be more broad and encompassing to further protect this valuable resource. He had another concern with the amendment covering the weekends.

***{Tape : 1; Side : B; Approx. Time Counter : 4.6}***

**HEARING ON SB 458**

**Sponsor: SENATOR FRED THOMAS, SD 31, Stevensville**

**Proponents: Greg Munther, MT Bowhunters Association  
Stan Rauch, MT Bowhunters Association  
Pat Graham, Fish Wildlife and Parks**

**Opponents: None.**

**Opening Statement by Sponsor:**

**SENATOR FRED THOMAS, SD 31, Stevensville** said the illegal taking of trophy big game is a serious problem in Montana. He states SB 458 raises the bar and substantially penalizes a person that would be convicted of purposely knowing or negligently taking, killing or possessing or transporting a trophy animal. He said one important detail is the common hunter who makes a mistake. This bill has some serious fines for having these animals in their possession or taking them. He said that is why they built in the language in page 3, line 9, subsection F which states what he read before. You must be convicted of purposely knowing or negligent. This is a high bar versus just having or being there. He stated if the language is not satisfactory, then he is for improving it. He thinks they have accomplished that.

He discussed section 1 which set up the significant penalties. He said they want to raise the threshold in Montana to make it a serious penalty to poach and possess game that is illegally taken. He stated this bill will make Montana a bad place to poach big game and the result of not passing the bill is to say "why not poach here in Montana where the game is good and the penalties are light."

**Proponents' Testimony:**

**Greg Munther, MT Bowhunters Association**, stated the association believes most Montanans intent to be law abiding and are law abiding when it comes to hunting and fishing. He said there are a number of people in this state who use the wide open spaces and

the quality of our animals for personal gain either monetarily or for some sort of self gratification in illegally harvesting the biggest and the best of Montana's wildlife. The association believes Montana will become attractive as surrounding states raise their penalties for similar violations as has happened in Colorado and Utah. The association would like to urge support of the bill because they believe it would better balance the risks. The reward of being caught and prosecuted in a substantial way serves as a deterrent for those people who might consider such actions.

He entered and discussed the informational packet,  
**EXHIBIT (fis38a09)**.

He stated there are three elements the association feel are important. They believe the restitution amounts should reflect market values. The second element is a license revocation. He said this bill proposes that fishing and hunting licenses be revoked for violators who take these trophy animals intentionally for five years as would poaching any big game animal using a spotlight, infrared scope, or night scope. The association feels these are deliberate acts; there is no mistaking that these animals were killed illegally and maliciously. The third element is that the money collected from the restitution penalties would be directed back into Montana hunter education programs. He said the hunter education programs are meant to promote and teach ethical, legal, and responsible hunting behavior which they believe is positive for the State of Montana, especially the sportsmen who are now being cheated.

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**Stan Rauch, MT Bowhunters Association**, discussed the antlers which were brought for demonstration of poached big game in Montana. He said a lot of poaching comes from people out of state. They go to the states where penalties are the lightest and take the trophy big game animals and leave. He said the only way to get people's attention is to promote the much higher fines.

**Pat Graham, Fish Wildlife and Parks**, provided written testimony,  
**EXHIBIT (fis38a10)**.

**Opponents' Testimony:** None.

**Questions from Committee Members and Responses:**



**SENATOR BECK** asked about goats being taken for trophy. He was shown by a committee member where in the bill it states goats are included.

**Closing by Sponsor:**

**SENATOR FRED THOMAS, SD 31, Stevensville**, stated there is no way we want the mistaken hunter to get hammered. He wants the committee to be comfortable with the bill that passes out of the committee. He said it isn't their intent to get someone who made a mistake, they want to hammer the poachers who are making a business of this in Montana.

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**HEARING ON SB 418**

**Sponsor:** **SENATOR CHARLES SWYSGOOD, SD 17, Dillon**

**Proponents:** Page Dringman, MT Landowners Alliance  
Dave Hodges, MT Landowners Alliance  
Paul Vancleve, MT Ranch Vacation Association  
Harold Blattie, MT Association of Counties  
Diane Colpo, MT Landowners Alliance  
Sandra Peck, Self  
John McDonald, self  
Donna Sevalstad, Commissioner Beaverhead County  
Candace Payne, Wife, Women Involved in Farm  
Economics  
Debby Barrett, self  
John Bloomquist, MT Stockgrowers  
Lance Lovell, Big Timber  
Tony Carroccia, Melville  
Dawn Curry, Citizen

**Opponents:** **REPRESENTATIVE STEVE GALLUS, HD 35, Butte**  
Stan Meyer, FWP Commission  
Jerry Wells, MT Council of Trout Unlimited  
Jim McDermant, Medicine River Canoe Club  
Stan Bradshaw, self  
Jerry Kustich, Lewis & Clark  
Bill Holdorf, Skyline Sportsmens' Association  
Dianne McDermant, Medicine River Canoe Club  
Paul Roos, outfitter  
Stan Frasier, Prickley Pear Sportsmen's Association  
Bob Wilkie, represented the people of Wisdom  
Chris Strainer, self

**Tony Schoonen, Public Lands Access Association**  
**Allen Schallenberger, Sheridan**  
**Vince Fischer, SkyLine Sports**  
**Pat Graham, Fish Wildlife and Parks**  
**Robin Cunningham, Fishing Outfitters Association**  
**Bob Decker, Helena**  
**Steve Luebeck, George Grant Chapter of Trout**  
**Unlimited**  
**Mike Lesnik, Helena**  
**Katrina Scheuerman, MT Audubon**  
**Darrell Baker, Anaconda Sportsman**  
**Sam Babich, self**

**Opening Statement by Sponsor:**

**SENATOR CHARLES SWYSGOOD, SD 17, Dillon,** stated SB 418 is brought to the committee because of the increasing conflicts between landowners and sportsmen regarding the use of bridge easements on county or state roads for access to underlying water courses. He explained how the Ruby River Task Force was established and what their objectives were.

He stated the Department of FWP requested an Attorney General's opinion regarding the issue of recreational access at bridges. The opinion has not been forth coming from the Attorney General. He believes the FWP does not have authority over county roads or county bridges, he thinks they rest with the Department of Transportation and/or the county governments. The bill is to discuss this issue and to get an open and honest debate so they can make some decisions on what the committee hears in the hearing. He believes they have some valid arguments as it relates to the use of bridge and road easements for access especially across private property. He said this legislation does not prevent access from any designated access site, any place where the county or state owns the land adjacent to the water course, any place where the right of way is held in fee title by the county or state, any place where the term of easement specifically allows access or any area where landowners give permission for access. He said the bill defines the easements on county roads and bridges as it relates to access of where private land is concerned.

**Proponents' Testimony:**

**Page Dringman, MT Landowners Alliance,** entered a pamphlet with access sites and letters from counties, **EXHIBIT(fis38a11)**, and letters from residents who could not be present, **EXHIBIT(fis38a12)**. Mrs. Dringman stated the bill was requested by FWP for an Attorney General's opinion. The request was made

in June and no opinion has been forthcoming and landowners have been concerned with the issue. She said landowners have also been concerned with the FWP request because the FWP asked for a broad right of access that is correlated to the recreational use of streams statutes. The FWP request to the Attorney General and the landowners' concerns were discussed.

Page Dringman said the FWP argument in the memorandum is the public right of recreating in water courses between the high water marks is justification for a right of access. Mrs. Dringman stated the argument uses the public trust doctrine which has always been a judicial doctrine addressing water born uses as a land use tool to restrict private property rights. On the stream access law, the law does not provide a right of access from dry land above the high water mark.

Page Dringman also commented on the numerous misrepresentations in the newspapers and the testimony given by the sponsor. She said the bill does not prohibit access where there is public land or where there the road or bridge is held in fee by the county or state.

The pamphlet was explained and handed in the Montana Afloat map, **EXHIBIT (fis38a13)**. Mrs. Dringman said the issue before the committee concerns the scope of the easement that was given to the county or the state Department of Transportation. She commented on court cases that have determined the scope of the easement and on bills in the current legislature. She also commented on the noxious weed bill and how noxious weeds are being spread and prevention of spread.

Page Dringman clarified that private property rights are a fundamental right; there are constitutionally protected rights and it has to be balanced with the right of recreation. She mentioned the court case of Garrison v Avral. Comments on the environmental degradation and stream bank erosion were considered. On her talk with the Department of Transportation, they don't believe their highway easements for the highway purpose encompasses recreational use. Letters from the counties were discussed.

Page Dringman stated the passage of SB 418 doesn't prevent fishing access site acquisition and negotiations but does say we recognize a difference between an easement and fee title.

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**Dave Hodges, MT Landowners Alliance**, entered written testimony, **EXHIBIT(fis38a14)**.

**Paul Vancleve, MT Ranch Vacation Association**, provided written testimony from the association, **EXHIBIT(fis38a15)**. He also represented the Crazy Mountain Landowners Association, the east side chapter and provided written testimony, **EXHIBIT(fis38a16)**.

**Harold Blattie, MT Association of Counties**, stated they support SB 418 and do not believe it substantially changes existing law but rather clarifies them. He said if you ask the question of who pays taxes on the underlying property, you would resolve what the issue is. He commented on page 2, line 20-22.

**Diane Colpo, MT Landowners Alliance**, related the problems her family has had with people on their property to gain access to the river. She said their problems are so bad they are thinking of selling their home. She stated there is a campground across from her property which has easy access for the handicap, children, adults, and fishermen.

**Sandra Peck, Self**, said their family has had problems with rafters, campers and vehicles at their home. There is a bridge at the entrance of their driveway. She said there is a fishing access and an access two miles up the river from their home. They have posted signs and asked people not to block their entrance to their home. She stated the property on both sides of the road belongs to them. She is also concerned with liability.

**John McDonald, self**, said in the Rock Creek area the bill will be a small step towards solving what has the potential of being a very explosive situation. He said the landowners have decided they are going to protect their property rights by whatever method they have to resort to.

**Donna Sevalstad, Commissioner Beaverhead County**, said she shares the concern of the liability issues, private property issues and how the easement was acquired on the underlying property. She urges the support of SB 418.

**Candace Payne, Wife Women Involved in Farm Economics**, said they support SB 418. She stated wife policy specifically recognizes the importance of guarding private property rights of landowners. She reminded the committee the law established in Montana is the extent of the servitude is determined by the terms under which it was originally granted.

**Debby Barrett, self**, said she looked in the Constitution and could not find recreational, sportsmen's or fishing rights. She

found in the Montana State Constitution property rights which allow acquiring, possessing, and protecting property rights and it is lawful. She commented on SB 445 and its connection with SB 418. She stated there are 300 fishing sites and FWP maintain, more than 300 public fishing access sites throughout the state. She said most of the sites provide parking and boat launching areas and some are equipped with toilets and camp sites. All sites are marked with special hook and fish road signs. The special sites have gone through EIS and protect the environment.

**John Bloomquist, MT Stockgrowers Association**, stated he is also representing the MT Farm Bureau Federation and MT Water Resource Association. He said the bill is not about recreational access, it is about the scope of the bridge easements. He said the association followed the situation in Madison County and thought it was resolved with the Ruby Task Force. Their interests were peaked when the request was made for the Attorney General's opinion. They feel the bill is necessary to define the scope of the easements.

**{Tape : 2; Side : A; Approx. Time Counter : 22.4}**

**Lance Lovell, Attorney, Big Timber**, entered written testimony, **EXHIBIT(fis38a17)**.

**Tony Carroccia, Rancher, Melville**, provided written testimony, **EXHIBIT(fis38a18)**.

**Dawn Curry, Citizen**, said she has always had adequate access to her favorite rivers both through public access sites and landowners who have allowed her access on their property. She feels it is necessary to spell out common courtesy and respect for the minority who has none, so they don't spoil the relations between landowners and the rest of the people. She said recreationalists will gain more by maintaining respectful and friendly relations with landowners than with belligerent demands.

**Opponents' Testimony:**

**{Tape : 2; Side : A; Approx. Time Counter : 27.4}**

**REPRESENTATIVE STEVE GALLUS, HD 35, Butte** said the committee will have to answer some questions. He asked if the committee supports stream side access law. Second question is whether the committee supports the hard working, 12 month resident sportsman of Montana or do they support promoting Montana as a playground for the rich and famous. He said if SB 418 is passed, the landowner courtsey is going to turn into a commodity. He urged opposition of SB 418.

**Stan Meyer, FWP Commission**, entered written testimony, **EXHIBIT(fis38a19)**.

**Jerry Wells, MT Council of Trout Unlimited**, said the preamble of the bill suggests that the current uses at bridges are a new phenomenon and he suggests that is not the case. He stated public right of way easements at bridges have been used for putting in and taking out boats for fishermen to gain access to streams for a long time. He explained why the majority of the right of way acquisitions in fee are easements. He said in acquiring the easements the state paid the full market value of the fee value even though they were only getting an easement. He understood they did that to gain as much possessory right as they could get. He said today the right of ways are used for a wide range of uses and list various uses. He said many of the smaller rivers and streams have seen landowner changes which have resulted where once there was access and now wealthy nonresidents own the land and are keeping everybody out.

He said the impact of passing SB 418 will eliminate access for people. He believes SB 418 is an extreme solution to what ever problems do exist at individual sites. He commented on the Wolf Creek bridge site on the Missouri River. He commented on lines 20-22, page 2.

**Jim McDermand, Organizations United for Rivers & Streams**, written testimony, **EXHIBIT(fis38a20)**.

**Stan Bradshaw, self**, said he was involved with the stream access cases when heard before the Supreme Court. He also assisted in the drafting of the legislation of the current stream access bill. He does not think SB 418 is the appropriate way to address the concern of the landowners. He commented on the memorandum for the Attorney General and the people who have opposed the position that has been expressed by OURS. He said if the bill was a clarification bill then the Attorney General will come to the conclusion he cannot make law. He said if the bill passes, then the opportunity is forth closed to consider the legitimate concerns of the recreationalists.

**Jerry Kustich, Lewis & Clark Trout Unlimited**, commented on the Ruby River Task Force and its accomplishments. He said they did have opposition by wealthy out-of-state new age landowners. The wealthy landowners could not restrict access and no longer market Montana public resource as an exclusive property right. He believes SB 418 is an effort to exact some sort of revenge and back by the wealthy landowners.

He believes true sportsmen would never side with the trespassing, with the littering, the abuses and language and believes there are laws that deal with these problems. It seems to him the right of way at bridges has only become a problem in the age of the new age landowner. He believes the bill is to add value to their property by taking a public resource and making a private property right. He said the bill would deal away public property rights for the benefit of private ownership without any compensation back to the public. He said these people are selling Montana's fisheries for big money and the public gets no money for that. He said this is a taking in reverse. He said if SB 418 is passed, many citizens will lose a vital component essential to the way of life in Montana for the benefit of a select few.

**{Tape : 2; Side : B; Approx. Time Counter : 0}**

**Bill Holdorf, SkyLine Sportsmens' Association**, entered and discussed a bridge sketch, **EXHIBIT(fis38a21)**.

**Dianne McDermant, Medicine River Canoe Club**, provided written testimony and maps of two Montana rivers, **EXHIBIT(fis38a22)**.

**Paul Roos, Helena**, said he has been involved in getting a state-wide river recreational or public waters recreational bill passed. He said some how everyone has to come together with collaborating answers and those answers have to be done on a site by site or location by location approach. He commented on the Blackfoot River Recreation Corridor from the 1970's. And he commented on the agreement for the Little Blackfoot River.

**Stan Frasier, Prickley Pear Sportsmen's Association**, stated he would think a 60 foot right of way would be a simple concept to understand. He commented on a bill in the legislature which would maintain agricultural use and help keep family farmers on the land.

**Bob Wilkie, representing the people of Wisdom**, entered petition, **EXHIBIT(fis38a23)**.

**Chris Strainer, self**, said this bill was mentioned to clarify issues regarding stream access via the bridges and it would not affect all bridges. He believes this would tend to confuse recreationalists by not knowing what bridges are effected and which ones they are to use. He believes the bill could be bad for business. He said many people access streams via bridges and if the bill passes it will discourage people from both coming to the state as tourists and also local people from going out and recreating on the rivers. He believes the laws of littering and

the other problems landowners have should be enforced and that we should rely more on educating people on what they can and cannot do at the sites.

**{Tape : 2; Side : B; Approx. Time Counter : 13.6}**

**Tony Schoonen, Public Lands Access Association**, said he called the County Treasurer in Butte and asked how much of the property tax dollars are used for maintaining roads and bridges. The County Treasurer said there is a certain amount depending on the size of the county. He wondered what the intent of the bill if we have been paying for the bridges for a long time.

**Allen Schallenberger, Sheridan**, provided written testimony, **EXHIBIT(fis38a24)** and discussed the history of the use of these areas.

**Vince Fischer, SkyLine Sports**, stated he would not want the committee to leave the hearing with an image all these bridges are access sites for boat and trailers. He said there are hundreds of bridges in the state where a person can simply and unobtrusively enter the stream. He stated the issue is access and that access should not be denied.

**Pat Graham, Fish Wildlife and Parks**, entered written testimony, **EXHIBIT(fis38a25)**.

**Robin Cunningham, Fishing Outfitters Association**, stated the only way he could conceive of getting into the stream or river would be to leap if the bill was passed. He said it seems like an unusual way for him to provide a service for a person.

**Bob Decker, Helena**, commented his involvement as the county commissioner of Lewis and Clark county and of an easement of the Dearborn River. He said the bill, if passed, would end public access on the entire Dearborn River.

**Steve Luebeck, George Grant Chapter of Trout Unlimited**, stated they oppose SB 418 and hoped the committee will table the bill.

**Mike Lesnik, Helena**, believes he has used every bridge in the floor of the Flathead Valley on both the Stealwater River and the Whitefish River for recreational paddling access to those rivers. He doesn't think there is any other legal access to those stretches of river. He knows there are many water recreationalists that are slobs and the people are going to have to police themselves.



**Katrina Scheuerman, MT Audabon**, stated it is the public's right to access and asked the committee to oppose the bill.

**Darrell Baker, Anaconda Sportsman's**, stated they oppose SB 418.

**Sam Babich, self**, opposed SB 418 and thinks it is a taking in reverse.

**Questions from Committee Members and Responses:**

***{Tape : 2; Side : B; Approx. Time Counter : 29.6}***

**SENATOR BECK** referred to the map given by Mr. Holden. He said he sees where he is putting the boats in. He asked where is he parking his vehicle. **Bill Holden** replied in the ditch up and down the side. There is public land along the road, you have to use the ditch. **SENATOR BECK** asked if there is room. **Mr. Holden** responded generally. **SENATOR BECK** stated he thinks here are problems on all bridges and there are some bridges that should be access sites but may not all bridges. In the drawing by Mr. Holden, he can't see where anyone would park a vehicle. **Mr. Holden** replied they would have to move it up or down the road. He hasn't seen anybody park a boat next to the access.

**SENATOR DOHERTY** stated it has been 8 months and no reply from the Attorney General. He asked when is there going to be a response. **Pat Graham** responded he doesn't know. He thinks the issues related to CI-75 have consumed them over the last couple of months. **SENATOR DOHERTY** said there has been a suggestion that a cabal of recreationalists have taken over FWP and substituted good sense for a rabid desire to get an Attorney General's opinion. He asked if that has happened. **Mr. Graham** replied the issue rose out of the bridge questions on the Ruby River. He said the FWP did address through some easements and fee title acquisitions, property along the Ruby River. He said one of the recommendations of the Task Force was to clarify the issue through the opinion.

**SENATOR BISHOP** read line 10, page 2. He asked why the bill doesn't say "if recreational access is only prohibited". He said people would know what that means. **Page Dringman** said most of the old easements do say for highway purposes and for transportation purposes and so it becomes a question of interpretation. She referred to cases in the Lewis and Clark County and Powell County. She doesn't think most easements include recreational access. **SENATOR BISHOP** asked if she had ever seen an easement that prohibited access. **Page Dringman** replied that she hadn't seen an easement that expressly

prohibits, but easements usually don't expressly prohibit, they say what use maybe made of the easement. **SENATOR BISHOP** referred to line 20, page 2, number 3. He asked if the legislature is powerful enough to take property away or give it away. He asked if the bridge is 40 feet wide and the right of way is 60 feet wide. **Mrs. Dringman** replied if there is an existing easement that specifies the width of the right at the bridge then that document should control, so, if that is unclear then the bill could be amended to address that. She said this came about because the existing statutes say the width of all county roads except bridges, alleys and lanes must be 60 feet. She said the Department of Transportation and county's concerns is if they will be able to maintain the underlying structures but often the bridge easement doesn't specify.

**SENATOR BECK** asked Mr. Graham what kind of ruling are they asking for from the Attorney General. **Pat Graham** said the chief legal council was present who prepared the request and he could answer the question. **Bob Lane** said they asked for a ruling for a number of reasons dealing with what they felt was a growing controversy. He said the request was for an opinion about access at road right-of-ways to cross rivers or streams. They realized an answer would not solve all of the circumstances but felt many of them could be answered with his opinion based on case law and the Constitution. They asked the Attorney General to answer as much as he felt he could about access at bridge crossings.

**SENATOR BECK** asked if they included interstates, secondary roads, primary roads, not just county roads. **Bob Lane** responded he believes they asked for access at county roads but the same principles would apply also to state right-of-ways. He said essentially they were dealing with issues along the Ruby River and county roads there. **SENATOR BECK** asked if it was strictly for county roads.

**SENATOR MESAROS** stated if Mr. Lane could submit information of the request to the committee it would be helpful.

**SENATOR TAYLOR** said there is a concern with the public's lack of respect for property rights as mentioned by the people. He asked how should the issue be addressed about the concerns of these people. **Mr. Lane** said it is both the legal and a policy question. The FWP does acknowledge the problems. He thinks they can be handled by prosecutions for trespass or littering. He thinks they can be handled by some restrictions on access. He said they recognize that there are police powers to the state that can control that and set limits on it.

**SENATOR MESAROS** stated he would like a copy of the request submitted to the committee. He said there is a big difference between county roads and interstate. He said in his district there is a state highway and county roads going through private property and neither which a right of way has ever been purchased. He said there is a lot of variation between means of acquiring right of ways for public roads.

**Bob Lane** said the question they asked was "may a member of the recreating public gain access from the right of way of a public road at a bridge crossing to a stream or river between the ordinary high water marks. He said their question was broad from a public road which could include state roads or county roads. He recognized one opinion will not solve all problems.

**Closing by Sponsor:**

***{Tape : 3; Side : A; Approx. Time Counter : 0}***

**SENATOR CHARLES SWYSGOOD, SD 17, Dillon,** said he thinks the issue was brought to the committee for a good reason. He said the Attorney General has had the request for 8 months and has not rendered a decision. He doesn't know if an answer is coming. He said he doesn't know it says anywhere that the legislature can't bring forth an issue to be discussed and be decided by the body as it relates to anything they do. He said it would be nice to have an answer and that is what the bill attempts to do. He stated the role of the FWP is to manage wildlife and fish for the recreating public and for the public well being, and to provide recreation opportunities for all Montanans. He wonders if that means expanding a definition or a use, such as an easement to fit that purpose, that is what the committee is going to decide. He said in most incidents there isn't much management that is a responsibility of the FWP at many of the bridge sites unless it is a specified access site.

He doesn't think the committee, by passing the judicial authority, is addressing the concerns that the bill brings forward. He commented about the question the FWP asked the Attorney General.

He said county roads are where the problem exists. He said some road right of way, particularly state highways, are mostly held in fee title however the interest held in most road right-of-ways particularly county roads are an easement, not fee title. He read section 7, 142107. He said the ownership of the easement interest rather than the fee title limits and restricts appropriate use of public road right-of-ways. He commented there are a variety of ways in which a road can be created and to

determine the width for any easement or fee. He referred to section 1822. He commented with a road established by petition or grant, which most county roads are, are governed by the designated width with the petition or the grant. He said usually the right of ways established by subscription are only as wide as the prescriptive use that established that road.

He said the whole premise of the FWP's memorandum is premised that the public has a Constitutional right to access. He said the public doesn't have a Constitutional right to access, they have a Constitutional right to use the waters. He said there is no guarantee exists to the access to the waters.

**ADJOURNMENT**

Adjournment: 6:10 P.M.

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SEN. KEN MESAROS, Chairman

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ADRIENNE PILLATZKE, Secretary

KM/AP

**EXHIBIT** (fis38aad)